APPEAL NO. 022199
FILED OCTOBER 17, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on July 18, 2002. The hearing officer determined that the compensable injury sustained by the respondent (claimant) extends to and includes left hip avascular necrosis (AVN), and that the claimant had disability during the following periods: April 11 through April 13, 2001; April 16 through April 23, 2001; May 7 through May 25, 2001; June 6 through June 8, 2001; and July 1, 2001, through January 22, 2002.[1] The appellant (carrier) contends that the determination regarding extent of injury is not supported by legally sufficient evidence and is against the great weight and preponderance of the evidence. The claimant urges affirmance.

DECISION

We affirm as reformed.

The hearing officer did not err in finding that on the date of injury, the claimant aggravated his preexisting AVN condition and, consequently, the compensable groin strain injury extends to and includes left hip AVN. In Texas Workers' Compensation Commission Appeal No. 94428, decided May 26, 1994, the Appeals Panel stated that "an aggravation of a pre-existing condition is an injury in its own right." We also stated in that decision that merely asserting an aggravation does not carry the claimant's burden of proof and that what must be proven is some enhancement, acceleration, or worsening of the underlying condition from the injury. The fact that symptoms occur during a period of employment does not mandate a conclusion that the employment was the cause of a claimant's ailments. Hernandez v. Texas Employers Insurance Association, 783 S.W.2d 250 (Tex. App.-Corpus Christi 1989, no writ).

In Texas Workers' Compensation Commission Appeal No. 970349, decided April 14, 1997 (Unpublished), we affirmed a hearing officer's decision that the employee's injury included a compensable aggravation of his bilateral AVN. In that case, as in the present case, there was medical evidence showing that lifting performed by the employee had caused the femoral heads to collapse, thus accelerating or worsening the claimant's AVN. We noted in Appeal No. 970349 that whether there has been an aggravation is generally a question of fact. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). As an appellate-reviewing tribunal, the Appeals Panel will not disturb

[1] A clerical error in the hearing officer's order in this case was corrected to modify the words "July 1, 2001, through July 22, 2002," to state instead, "July 1, 2001, through January 22, 2002."

the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). Applying this standard, we find no grounds upon which to reverse the decision of the hearing officer.

As reformed by the Order to Correct Clerical Error dated October 8, 2002, we affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **FIDELITY AND GUARANTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

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Judy L. S. Barnes
Appeals Judge

CONCUR:

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Susan M. Kelley
Appeals Judge

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Thomas A. Knapp
Appeals Judge